

LFC Requester:

Theresa Rogers

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original ☐ **Amendment** ☒
Correction ☐ **Substitute** ☐

Date February 13, 2016

Bill No: HB 336

Sponsor: Rep. Gentry & Sen. Ivey-Soto

Agency Code: 305

Short Public Peace, Health, Safety

Person Writing Jennifer Salazar, AAG

Title: & Welfare Comprehensive

Phone: 827-6990 **Email** jsalazar@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

The House Floor Amendment to House Bill 336 ("Amendment") makes changes to the language found in Section 1 and adds new material in Section 2.

Under Section 1, the language regarding the Secretary's authority to "create and maintain" a criminal records database is replaced with the following language – "create access and otherwise manage" a criminal records database.

Section 2 outlines the requirements for reporting to the FBI's National Instant Criminal Background Check System ("FBI Database").

Under paragraphs A and B of Section 2, the Administrative Office of the Courts ("AOC") must inform the FBI's Database within ten days after a court proceeding relating to a person's eligibility to receive or possess a firearm or ammunition.

Under paragraph C of Section 2, the AOC must also notify the person who has been adjudicated as mentally defective or who has been committed to a mental institution, that the person is not eligible to receive or possess a firearm or ammunition under federal law.

Under paragraph D of Section 2, a person who has been adjudicated as mentally defective or who has been committed to a mental institution, may petition the court to remove that person's firearm related disabilities and restore the person's right to received and possess firearms and ammunition.

Under paragraph E, the court must conduct a hearing and receive evidence regarding the petition for relief. The court shall grant the petition if it finds, by a preponderance of the evidence, that (1) the petitioner will not be likely to act in a manner dangerous to public safety and (2) the requested relief will not be contrary to the public interest. See Section 2(F). A record of the

hearing shall be kept and the decision made by the court may be appealed. See Section 2(G). A person may petition the court for reinstatement of his firearm rights once every two years. See Section 2(H).

If the court grants a petition for relief, the AOC must “promptly” notify the U.S. Attorney General for the purpose of reporting to the FBI Database.

The information compiled and transmitted under Section 2 is not “a public record” and is not subject to disclosure pursuant to the Inspection of Public Records Act. See Section 2(J).

A person who is the subject of the reported information, or that person’s authorized representative, has a right to obtain, inspect and correct information compiled and transmitted to the FBI Database. The AOC is charge with promulgating rules relating to the inspection and correction of information contained in its records and relating to the transmission of such information. See Section 2(L).

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

There may be an issue as to whether this Amendment infringes on a person’s right to bear arms under Article 2, Section 6 of the New Mexico Constitution. There is an argument that the Amendment would likely be considered “reasonably related to the public health, safety, and welfare.” See State v. Murillo, 2015-NMCA-046, ¶ 7, 347 P.3d 284. There may be other constitutional challenges issues under the Equal Protection Clause since the Amendment only allows a certain group of individuals (i.e. persons “adjudicated as a mental defective or committed to a mental institution”) to petition a court to restore that person’s right to receive and possess firearms.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

The Amendment states that the information “compiled and transmitted” under Section 2 in “not a public record,” and therefore, is not subject to disclosure pursuant to the Inspection of Public Records Act. However, it is important to note that this information is likely considered a “public record” for purposes of the record retention requirements outlined in the Public Records Act, NMSA 1978, Sections 14-3-1 to -25.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A